

**GETTING THROUGH YOUR
MASSACHUSETTS
DIVORCE OR PATERNITY CASE**

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Mr. Lee is available for “Limited Assistance Representation” as well as the traditional “Full Appearance” representation. Mr. Lee is willing to consider reduced fees and retainers for deserving clients.

This Is an Informational Booklet Only

1. These comments are to you to help you understand the process you are going through. They are general ideas and rules of thumb, not advice for each situation. You should get advice for your own case from an attorney.
2. These are based on what *I* believe is good sense, and what the Courts expect. They are not binding orders from any Court. ***Your particular case may call for particular advice and Court orders that may differ from this general discussion.***
3. Discussions about child care, custody, and support are applicable to both married and unmarried parents in the court system.

Get A Lawyer's Help

1. A lawyer knows the rules of court and the law about property, child custody, visitation, and support.
2. A lawyer can do some of the worrying for you.
3. A lawyer will help you communicate and negotiate with both the other side and the court system.
4. If you cannot afford a lawyer who handles your entire case, consider using a lawyer who provides "Limited Assistance Representation." The lawyer can assist you at critical points, or in drafting critical documents, without taking on your entire case. The lawyer will charge only for the work done. Be sure, though, that you are ready to handle other parts of your case as well. A "L.A.R." lawyer will not be agreeing to stay with you after his or her tasks are complete.
5. Ask for payment plans or reduced rates. Some lawyers are willing to help.

Things You Should Do to Help Yourself and Your Lawyer

1. Create a new e-mail address to communicate with your attorneys and others by e-mail. Do not provide this e-mail address to your ex.
2. Change all passwords to all of your e-mail, banking, and other password-protected services.

3. Your ex has almost certainly had access to your computer. He or she may know, or be able to guess, your passwords. You need to avoid having e-mail intercepted or copied. Be aware that there is always a slight chance of interception of e-mail by nosy third parties, but it is generally considered confidential and appropriate to communicate this way. ***If using email is a particular concern, do not use it.***
4. Obtain proper computer protection against viruses and spyware. The primary providers of such programs are Norton, McAfee, and Microsoft. Choose one and use it.
5. If you have a home network using WiFi, secure it with a new password after you are separated. An open network can be used to obtain access to your computers, or at least to “steal” your internet service. WiFi can extend far enough beyond the walls of your home to be accessed by others, including your ex. No, most ex’s won’t do this – but a few will.
6. Consider using encryption software for sensitive documents you will keep or create on your computer. Free software is available, such as “Meo”.
7. Keep notes of events relevant to your case. Use a spiral-bound notebook or other resource. Be careful about using computer files that can be accessed by others.
8. Keep your details off of Twitter, Facebook, MySpace, and other “social networking” sites. A good lawyer “mines” these sites for information – your own comments and admissions, photos of you behaving badly, and so on.
9. Buy an “accordion” file to sort your papers.
10. Fill out a financial statement right away. Fill one out before every court hearing for your attorney or the Court. Financial statements can be downloaded from the Court itself. Type “Massachusetts Financial Statement Probate Court” into your search engine. You can type into the forms obtained online and print them.
11. Pull together copies of your tax records from the last three years, including W-2’s, 1099’s, and Schedule C’s.
12. Hold on to all of your bank statements and credit card statements. If you can scan them and forward them to your attorney, you will save time and money for both of you.

13. Hold on to all pay stubs you receive. Be prepared to give them to your attorney or the Court.
14. Provide your attorney with a complete financial statement and four (4) pay stubs seven (7) days before any Court appearance (Motions, Pre-Trial Conference, Status Conference, Trial). Your attorney also needs your prior year's W-2 forms.
15. Provide your attorney with one (1) copy of each of the documents and document types discussed in "Mandatory Document Disclosure."
16. Keep your attorney updated on your address, phone number, e-mail address, and other contact information.

Relationship, Family, and "Household Member" Violence

1. *All family members have an absolute right to be free of violence or threat of violence, as well as unwanted sex.* Massachusetts General Law Chapter 209A declares that "attempting to cause or causing physical harm," "placing another in fear of imminent serious physical harm," or "causing another to engage involuntarily in sexual relations by force, threat or duress," are all "abuse" when they come from "family or household members." All these forms of abuse are illegal.
2. Family and household members are persons who: "(a) are or were married to one another; (b) are or were residing together in the same household; (c) are or were related by blood or marriage (d) having a child in common regardless of whether they have ever married or lived together; or (e) are or have been in a substantive dating or engagement relationship. . . ." Where "dating" relationships are concerned, ***a judge will almost always find a sufficient relationship exists***, especially if there was a sufficient threat. The rule of thumb: expect that "one date is enough."
3. If you are abused by a family or household member, seek help from the police and courts whether or not you can contact me. The police ***must*** help you seek a restraining order against an abuser at any time of the day or night. The police must help either party, male or female, and ***violate your civil rights if they fail to do so.*** ***Any*** Court can issue an order during the day. At night, judges are "on call," and can issue a restraining order over the telephone. The order can require a person to vacate the premises until the matter can be heard in court. When the matter is heard in court, the order can be extended for up to one year.

4. Violations of a Restraining Order are criminal acts, and can cause further arrests and prosecution. The police and District Attorneys' office take these cases very seriously; no one wants to be accused of ignoring a cry for help and allowing someone to be seriously injured or die as a result.
5. The order cannot stop an abuser who does not fear arrest. The law doesn't always work perfectly. There are many horror stories of people who have killed their partners despite court orders. If you don't take at least some step, though, you have no protection, no buffer. However, if you need additional protection, go to a shelter, and discuss other steps with your lawyer, law enforcement officials, and family.
6. Guns are often used in the heat of passion. If your spouse has guns, ***advise your lawyer immediately***. If you own guns, store them safely away until your situation cools down; neither you nor your spouse wants to act (or be accused of acting) with a gun in the heat of an argument. Remember, your own gun (or any weapon) can be turned against you.
7. Restraining orders affect custody determinations. A person found to be violent is presumed unfit for custody absent an additional finding by the Court.
8. Actions which are not "abuse" may still be criminal. A new statute outlaws certain forms of harassment even when there is no family relationship. This may be applied against the parties, their family, their friends, and others who "butt in" on a hotly contested divorce. Stalking, cyber stalking, phone messaging, and "publicly" harassing on social networking sites are all inappropriate. Avoid doing these things, and get help if someone is doing them to you.

The Children in General

1. *All issues regarding the children involved in your case are resolved by considering what is in the children's best interest.* This is a legal and factual test.
2. The Courts and statutes of Massachusetts make clear that children are entitled to be provided food, shelter, clothing, proper medical care, education, a stable home life free from abuse and neglect, and contact with parents who can and do behave appropriately.
3. Parents do not have an absolute right to custody, visitation, or other contact with their children. If one parent abuses the other parent or children, displays

significant mental impairment, or has other difficulties, parental privileges may be restricted or terminated.

4. When children are abused or neglected, the Department of Social Services may become involved, as well as the Probate and Family Court.
5. If you are divorcing, you must complete a two-session “divorcing parents” course before your divorce will be granted. You are obligated to make the arrangements for the class. It is not costly. If you do not take the class, you may be denied custody or visitation. This generally does not apply to parents who were never married to one another, but it will.
6. Never-married parents should also take the course, and will probably get their own course soon enough. A pilot program is in effect in several counties.
7. The parenting class is a class in civility and common sense. All of my comments here are also aimed at civility and common sense.
8. If there are no real issues about the safety and well-being of the children when with your former partner, keep the children out of the middle. They are not pawns nor a means of punishing the former partner. If both of you love the children and both are appropriate with them, do everything possible to let the children have the best relationship they can with each of you.
9. If you have issues about the children’s health or well-being, including their emotional health, discuss the concerns with your attorney and, as appropriate, their physicians and counselors. If your attorney doesn’t know about the issue, he or she cannot decide whether the Court should be involved. If their doctors and counselors do not know, the children cannot be evaluated and cared for as necessary.
10. Always communicate carefully with your children regarding the break-up. Do your best to be fair and neutral (if not praising) about your former partner. Be honest without giving information that they are too young to fully process.
11. Obviously, the exact circumstances dictate what you can and must tell the children (for example, if there is clear evidence of real abuse, some warnings will be appropriate). In most cases the Court will disapprove of “disparaging” the other party.

12. “Disparaging” is communication designed to destroy the former partner in the children’s eyes. The children are not your judges; the Court is. The best that you can do is love them regardless of your problems with your former partner.
13. Don’t put the children into a position to overhear all of the ugly details of the break-up. They will overhear more than you want no matter how hard you try. However, do the best you can to never discuss the former partner negatively when they might hear you. Be especially careful about the ways in which family members and new partners discuss the former partner, as this can present a confusing and hurtful situation — and the child may well rebel against you.
14. Don’t use the children to communicate with your former partner. The children are not go-between. Using them this way puts them in a stressful role. They should not be used even to carry sealed notes or child-support checks back and forth.
15. If a restraining order or animosity prevents direct communication with a former partner, find an adult messenger acceptable to both former partners and the Court (but *only* if the Court order allows such communication).
16. Do not unnecessarily limit your former partner’s communications with the children. Children love to know they are being remembered and thought about by the absent partner. So long as the absent partner’s communications are appropriate, let the children receive them — telephone messages, e-mail, letters, cards, and so on. If you think the communications are inappropriate, seek an attorney’s opinion so a record can be made and brought to the Court’s attention when possible.

Child Custody

1. There are two “sides” of custody: “physical” and “legal.”
2. Physical custody determines *with whom the children principally reside*. As a natural consequence, it also determines which parent will pay child support.
3. “Legal” custody determines whether one or both parents will have the right to be consulted with regard to major life decisions, such as medical care, education, religious education, and so on. Both may be “shared” or “sole,” as defined by the statute.
4. Physical custody most often goes to the mother of the children.

5. While some consider this a form of gender discrimination, it can often be shown that the mother of the children has made more career and time sacrifices to care for the children. It can also often be shown that the father has the higher earning potential because he has been “out in the world.”
6. It is *not* discrimination to consider these factors in agreeing to or awarding custody.
7. Unless the mother has substantial difficulties, such as substance abuse or severe mental disorders, issues with behavior or violence, or has left the children with the father, the mother will more often have physical custody. It will usually be called “sole physical custody.” *This is not a declaration that the father is unfit or unimportant.*
8. Fathers who have substantial difficulties, such as substance abuse or severe mental disorders, issues with behavior or violence are just as unfit as mothers who have such issues.
9. The non-custodial parent generally obtains liberal visitation unless he or she is unfit.
10. “Visitation” is the term used in the statutes and cases, although some people prefer terms such as “parenting time.” When the statutes change the terms, my writings will change the terms.
11. “Shared physical custody” is a form of custody in which the parents each share substantial time with the children. Each houses and feeds the children for substantial time. Clothing and other expenses are shared. Child support may flow from one spouse to the other, but it is generally less than the “Guidelines” require. This arrangement is most often entered by parents who can be *very* cooperative.
12. Shared physical custody should only be agreed to because it is truly best for the children, and not to evade child support or avoid bruised feelings of the parents. Often issues arise in which new litigation ensues – where will children go to school, how will child support be set, what happens when one parent leaves the general area in which the children have been raised. Many studies suggest that having a primary home is better for the children.
13. Shared physical custody is almost never granted in a contested divorce. It is virtually unheard-of where parents were never previously married.

Visitation

1. Whether it's called visitation, "parenting time," or any other term, it is a right of *all* fit, non-custodial parents.
2. It is also the *child's* right. Each *child* has a right to good contact with his or her non-custodial parent.
3. Parents with serious difficulties may require supervision. If there problems are serious enough, they may have no right of visitation.
4. Drug and alcohol abuse are examples of serious difficulties. Differences in religion, or having an appropriate significant other, are *not* examples of serious difficulties.
5. As a general rule, parents are presumed fit to spend time with their children.
6. Good visitation includes activity and "down-time." It includes recreational activities (sports, movies, games, visits to zoos and museums, time spent on hobbies) and helping with homework.
7. Most visitation will include regularly scheduled and non-scheduled visitation.
8. The parties generally arrange a schedule to build continuity and predictability for themselves and the children. However, other "reasonable" visitation is generally allowed on "reasonable" notice.
9. Limitations may be placed where there are substantial issues such as substance abuse, relationship violence, or severe mental disorders. In those cases, visitation may be supervised or may not be allowed at all. If you believe this exists, you should have an attorney's help.
10. When there is no reason to impose limits, visitation should be allowed to flow as it does.
11. Until children reach an age at which they "vote with their feet," the custodial parent should not discourage visitation or enable "skipping" by younger children. Failing to provide visitation to legally fit parents of younger children impedes the growth of an appropriate relationship. No fit parent should put his or her disagreements with the other fit parent before the child's visitation.

12. In fact, unreasonably refusing visitation is itself a form of unfitness. In extreme cases, it can and does lead to changes in custody.
13. Good visitation does not include disparaging the other parent.
14. Good visitation does not include seriously inappropriate activities – serious substance use and abuse, seriously inappropriate entertainment, and so on. However, the parents may certainly have reasonable differences in setting what is “appropriate.” This is part of what should be common sense – a “PG-13” movie may be fine in one parent’s view, but not another. No parent should be handing the child a “XXX” film.
15. Third parties – parents, siblings, significant others – are appropriate “guests” at visitation so long as they are appropriate toward the child. The custodial parent does not have the right to control the presence of appropriate adults engaged in appropriate activities.
16. The age at which children usually develop enough maturity, independence, and sheer size to “vote with their feet” varies, but this usually occurs around age 14. At that point, a mature non-custodial parent learns to negotiate and work more with the child. Otherwise, the child will develop long-term resentments.
17. Transfers should be dealt with in an adult fashion by all adults present.

Custody Litigation

1. Custody and visitation battles are discouraged by the Court and by most sensible attorneys when both parents are appropriate and able to care for the children.
2. A custody battle is usually based on a suggestion that the mother is unfit to care for the children, because (as noted above), mothers most often get custody by custom and agreement.
3. Any parent must have serious problems before being declared unfit. Women often base a large part of the self-esteem on their maternal skills and instincts.
4. Custody battles deeply scar children. They should only be fought when one parent genuinely and reasonably believes that the other presents a serious threat or risk of harm to the children.

5. There must be a good basis for one parent's claim that the other is substantially unfit for custody of any kind. It must be possible to develop evidence of the parent's problem.
6. Generally speaking, a custody battle should be waged only when there is a reasonable belief that the other party has one or more of the following: serious psychological difficulties, substance abuse difficulties, a history of significant violence and abuse, a history of significant neglect, or a pattern of actively and unjustifiably seeking to alienate the children from the other parent.
7. Custody battles are also expensive, both for attorneys (a custody battle rarely takes less than 100 hours of attorney time over two years) and other professionals.
8. The Court will almost always appoint a Guardian ad Litem (a psychologist, social worker, or attorney) to investigate the situation and try to determine the real facts behind the allegations – and the parties (YOU) will pay for this investigation.
9. Drug tests and psychological evaluations are often required.
10. The Department of Social Services (DSS) often becomes involved, requiring that your attorney engage with that agency as well.
11. The Court may appoint an attorney to represent the child or children. This cost is most often paid by the parties.

Child Support

1. *All parents are obligated to financially support their children.* For the custodial parent, this means providing shelter, food, and necessities. For the non-custodial parent, this means paying a regular amount of child support.
2. Child support is computed based on the "Guidelines." These are, in essence, a mathematical calculation which accounts for the pre-tax income of each parent, the number of children, and their ages. The "Guidelines" apply in cases in which at least one child is under 18 and enrolled in high school or a lower grade. It does not matter whether you and your former partner were ever married.
3. The Courts rarely make exceptions. The two primary exceptions occur when a) one or both parties have higher income levels or b) a child or children are

over 18 and no longer in High School. At these points, the Court has “discretion.”

4. The Guidelines use both parties’ gross (pre-tax) income to determine the contribution each provides. Actual expenses incurred for living are not considered. Each party’s gross income is (less child care costs, medical insurance, dental/vision insurance, and court-ordered child support actually being paid on behalf of children with different partners) is used to determine a “total support” due for one child. A small percentage is factored in for additional children of the same relationship. The contribution due from the custodial parent is deducted based on a percentage of “available income.” The non-custodial parent owes the remainder.
5. This new method of calculation has generally resulted in weekly child support amounts that are higher than those calculated under the previous Guidelines.
6. Child support can be reviewed every three years.
7. Support can be ordered for children who are out of high school, and/or the “non-residential” parent can be ordered to pay costs of “maintenance and education.” Most of the time, support of some kind continues while the child is getting further education or training.
8. Support can continue up to age 23 if the child is pursuing education. Education after one (1) bachelor’s degree, or after age 23, however, is not available under the statutes.
9. Child support must be paid. If the non-custodial parent fails to pay child support, a Contempt action can be brought. The Court can order an unemployed non-custodial parent to seek work, and even “impute” income not earned. The Court can jail a reluctant non-custodial spouse. The non-custodial spouse is required to pay the custodial spouse’s private attorney’s reasonable fees and expenses for collecting unpaid child support.
10. Either parent may be ordered to work to help the children if unemployed or underemployed. This is within the Court’s discretion.
11. Child support is almost always collected through the Massachusetts Department of Revenue, Child Support Enforcement Division (DOR/CSE). This is mandated by Federal law. A wage assignment is usually put in place; your employer sends a check to the DOR/CSE. If your employer does not send the money, you must do so. Even if your employer is disobeying the

law by not deducting the support, you will be penalized for not sending support.

12. If you have seasonal or unsteady employment, you must save money to allow you to pay full support during layoff periods. Set up a separate savings account to fulfill this obligation, and contribute what you must. Your child support will be calculated based on your average weekly earnings over a full year. Thus, you must pay the weekly child support, whether or not you are working. You can, of course, seek a modification when laid off, but if it is a “regular” layoff, the Court is unlikely to grant the modification.

Alimony

1. *Alimony has become less common in the current world, but it has not disappeared.* The financially more successful spouse may be required to pay alimony under appropriate circumstances, whether or not child support is also being paid.
2. Alimony is unlikely if the marriage is very short (under 5 years), and becomes increasingly more likely the longer a couple has been together.
3. Alimony is also unlikely if the parties have similar earning capacities.
4. Alimony may be permanently waived by Agreement, but the Court must decide whether to accept such a “surviving” waiver.
5. Where a marriage is over 20 years in duration, “survival” of the waiver with the Court’s approval is less likely. Thus, even if there is no “current” alimony under such an Agreement, there will be the possibility of a later award in most long-term marriages.
6. Alimony is determined either by agreement or within the judge’s discretion. Judges may differ in their approaches to alimony. Some use an “income equalization” calculation. Others find other ways to calculate support.
7. If alimony is a serious likelihood in your case, you and your attorney will spend time carefully reviewing the facts to determine an approach to advocate.
8. Unmarried parties cannot obtain alimony, nor anything that looks like alimony. The Supreme Judicial Court in Massachusetts takes a narrow view of providing “divorce-like” remedies to people who have not chosen the contract of marriage. The SJC’s view is that you are free to live without the

contract if you so desire – but the rights to a divorce action and divorce remedies are rights that you give up by refusing the contract.

Property and Debt Division

1. Property and debt are two sides of the same coin.
2. You must immediately get a clear idea of what you own and owe, and what will be in dispute. Filling out the “Long Form” financial statement is an excellent way to do this, even if your income does not require its use in Court. Inventory everything that you can.
3. In a divorce, the Probate and Family Court has jurisdiction over all of the property and debt of both parties. It is obligated to order “equitable” division of the property and debt. This is sometimes referred to as “Section 34” division, because it comes from c. 208, s. 34.
4. Section 34 property division is *not* allowed in a paternity case, or between unmarried cohabitants without children. However, cohabitants may have rights under more limited principals and rules of equity. Enforcing these will almost always require a lawyer’s help.
5. “Equitable” means “fair,” not “equal.”
6. However, most results for medium to long-term marriages give an approximately equal division of property obtained during the marriage, and we usually start at that proposition. Most cases revolve around assets such as equity in a marital home, retirement accounts, and so on. Small-value assets should not be the subject of long or heated arguments.
7. In many divorces resolved by agreement, unequal property division can be used to “buy out” alimony rights.
8. As with alimony, the Court’s approach depends on length of the marriage as a major factor.
9. Many other factors are considered as well, however, in determining what each party should take from the marriage, and what should be paid.
10. If you have significant property or debt, you should get a lawyer’s help in the property division aspect of your divorce.
11. Unmarried parties cannot obtain the broad “equitable division” of property.

12. Almost anything you own is at least arguably “marital property.” Property “earned” and paid for during the marriage, property obtained by inheritance, property obtained by gifts, and other property is generally part of the “marital pot.” This does not mean that each spouse gets a portion of every such asset, however. Individual considerations can apply to individual property.
13. Property obtained before the marriage is often considered “out of the pot.” This is not a rule, however, and the length of the marriage and other factors affect this.
14. Property often has two values: “cash” and “sentimental.” Make sure that you know what you own, and what you want to leave the marriage with. Even photos of the children are property, and some ex-spouses are unkind at best about sharing these for copying.
15. If you are leaving the home, do your best to take an inventory before you do so. If you are remaining there, take an actual inventory of what is in the home. Inventory your safe deposit box as soon as you know a divorce is imminent. Check your bank balances on all accounts to which your spouse has access.
16. Insurance policies, IRA and 401k retirement accounts, stocks, bonds, annuities, family trusts of which you are the beneficiary, and other such financial items are property. Make a list of them as soon as possible. Children’s bank and trust accounts held by the parties should be accounted for in any divorce settlement.
17. If real estate or other property of value is owned in the name of your spouse only, you should make sure your lawyer knows. Such property can be transferred and conveyed away. Internet access to the Registry of Deeds makes it easier to track down land transfers than ever before.
18. Court rules require that documents relating to property be exchanged by the parties. You will receive a separate instruction sheet quoting the rules and explaining them in simpler English. This is often ignored, but you must start gathering the required documents immediately.
19. If you do not have the documents, you should write down an explanation, as your lawyer may have to provide an explanation to your spouse’s attorney and the Court.
20. The Court (and lawyers) consider the following “factors” in deciding how to divide property (whether by agreement or judgment). They are not necessarily given “equal” weight. This is an “art,” not a “science.”

- a. Length of the marriage.
- b. Conduct of the parties during the marriage.
- c. Age of the parties.
- d. Health of the parties.
- e. Station.
- f. Occupation of each party.
- g. Amount and sources of income.
- h. Vocational skills.
- i. Employability.
- j. Estate, liabilities and needs of each of the parties.
- k. Opportunity of each for future acquisition of capital assets and income.
- l. Present and future needs of the dependent children of the marriage.
- m. Contribution of each of the parties in the acquisition, preservation or appreciation in value of their respective estates.
- n. Contribution of each of the parties as a homemaker to the family unit.

Counseling and Psychological Well-Being

1. *Strongly consider professional counseling if you have not already done so.* You will almost certainly benefit, if only in learning tools for dealing with your ex-partner.
2. Counseling is especially important if you and/or your partner have been abusive, have used drugs, alcohol or other addictive substances/activities to “escape,” or have serious issues dealing with your children or other “third parties” in the divorce.
3. A professional counselor also spares family and friends from hearing and re-hearing your tales of woe.
4. Most communications with a properly licensed counselor are privileged. That means that your records and conversations can’t be used against you. Thus, it generally does not hurt to confide and seek support as needed.
5. If you have a history of depression, rage, obsessive traits or other serious emotional difficulties, seek medical evaluation. Some prescription medications, including those commonly called anti-depressants, may help you bring these issues into better control and perspective. Many people

develop imbalances in their brain chemistry which can be corrected by using these safe medications.

6. Do what is medically best without worrying about “how it looks” or “what the Judge will say.” In any event, a party seeking help for such problems will generally be treated more favorably than a party who practices daily denial of serious issues.
7. In addition, it is a good idea to exercise, so long as your doctor agrees. Exercise promotes *mental* health. Studies show that moderate exercise is as effective an anti-depressant as commonly prescribed medications.
8. “Moderate” exercise means: 10 minutes of warm-up; 30 minutes of brisk walking, jogging, or stationary bicycle-riding; and 5 minutes of cool-down. Repeating this only three (3) times per week has a positive effect. ***Consult with your doctor regarding an appropriate program based on your physical condition.***
9. Any other healthy activity that distracts you and changes your focus, especially group activities, is highly recommended. Whether it is playing in an adult sports league, singing in a chorus, going on group outings, or going to museums, you should engage in activities which take you temporarily away from your issues. Activities which require concentration and focus are especially helpful, as they force you to literally forget your issues for a period of time.
10. Widening your social group helps, especially if not all of your new friends are involved in their own divorce or relationship crisis. Support groups are also useful, but do not rely on them for all of your activity and socialization. Surrounding yourself with other people in crisis is not always going to help you get through your own.
11. If your children are in or need counseling, get them there. You should cooperate with the child counseling process where it is not clearly a “set-up.” Even then, an astute counselor may see the truth once you are sitting with him or her and your children. Many child-related cases turn around in an accused client’s favor where the allegations are false or exaggerated, and the counselor comes to that conclusion by observing the children and you.

Communications with Your Attorney

1. *Keep “Memoranda for My Attorney” in a file spiral bound notebook or diary.* Write notes of anything that occurs regarding your relationship with your former partner or children. Date each entry.

2. Keep the notebook with you when you anticipate contact with your former partner, especially if there is a history of tension, claims of abuse, and so on. Write about both bad and good events.
3. Write about the history off the relationship. These memoranda will serve as the basis for affidavits and, if necessary, testimony in court — they allow your attorney to obtain “your” side, and give you the ability to easily recall events.
4. Communications to and from your attorney are privileged. That means that the attorney cannot be required to reveal them. This assumes, as a legal matter, that only you and the attorney converse, with no “unnecessary parties” overhearing or participating.

Communications with Others

1. *Conversations with most people apart from licensed counselors, clergy, and lawyers are **not** privileged.* What you tell your family, friends, and others can at least in theory be used against you. Your non-counseling medical discussions are not entirely privileged.
2. The Internet is the ***least safe place to hold discussions of any kind.*** E-mail can be subpoenaed from the sender and the recipient. Programs exist allowing anyone with access to your computer to secretly record your e-mail, “chats,” “Instant Messages,” and websites visited. Some of those programs allow “remote access,” so that your spouse can obtain the information even if he or she is no longer in the home, so long as there was access to the computer at some time. This may be “wiretapping,” or otherwise illegal, ***but the information is still in the other party’s hands.***
3. Material found on MySpace and other “social networking” systems will show what the other side is publicly saying, doing, and posting. Many opposing parties have shown their “true colors” on these sites. ***Keep prejudicial statements, photos, and conversations out of your social networking sites.*** Even a “locked” site, like Facebook, can be accessed by people you trust. ***People you trust can turn on you. They can and will “stab you in the back.”***
4. If you have used a computer for employment, to obtain advice, talk about issues, engage in an affair, or for other communications that may harm your case, do not voluntarily give it to your partner. Hard drives can be erased or reformatted, but ghosts of the data often remain. The “cache” folders often contain material from Internet sessions. You may be obligated to turn such

documents over based on a proper discovery request. You should not make it easier for the other party to obtain harmful information.

5. Because the harmful information is discoverable, you may not legally delete it from your drives or otherwise destroy it. You are a party in a litigation process. If you are shown to have intentionally destroyed or hidden evidence, you can be sanctioned by the Court. In addition, if your attorney sees a pattern of intentionally hiding or destroying documents, he or she is obligated by attorney ethics to consider withdrawing from your case.
6. Even if recorded computer data is not admissible, it will lead to other ways to obtain and admit evidence. A computer, for example, can be subpoenaed to a deposition. An anonymous “chat” friend may turn out to be your *partner’s* friend. Anyone with access to a “Chat Room” may properly record all that is written there and become a “live” witness in Court. Anyone who receives e-mail can be subpoenaed to bring copies of the e-mail to Court. Any Internet service which holds the e-mail can be subpoenaed to Court.
7. Even *you* can be subpoenaed with e-mail you have sent or received – e-mail is protected by privacy laws while in transit, but not while “at rest” on your computer. Only attorney-client, counselor-client, and clergy-penitent communications are absolutely privileged.
8. At best, your Internet communications could be embarrassing. At worst, your financial rights, child custody or contact rights, and other rights may be affected. Fantasy affairs, real affairs discussed online, sexual addiction, financial mis-dealings, and more can be raised by your former partner. The Court may become concerned if the problems appear serious enough.

Communications with Your Former Partner

1. *If a restraining order has been brought against you, do not communicate with your former partner.* Do not ask anyone to communicate for you. Do not send flowers or gifts. Leave all communication to the attorneys. Make sure that any and all communications follow the limits set by the Restraining Order.
2. Your communications may be used against you, and may be exaggerated or misconstrued. Understand that the change in your relationship requires that you change your communication style with your former partner. Abusive e-mails may be used against you.
3. If you and your former partner have difficult relations, and especially if there is a history of missed visitations or other appointments, write letters or e-

mails to your former partner to confirm all discussions and arrangements. Before sending the letters or e-mails, copy them, keeping a copy for your reference.

4. Keep copies of all replies.
5. If your former partner refuses to discuss child-related issues with you, raise the issues in writing in these letters and ask for a response. If the former partner denies seeing letters or e-mail, send another copy by certified mail, return-receipt requested or by priority mail with delivery confirmation. Send any bills which the former partner is to pay the same way.
6. E-mail is an excellent way to communicate quickly, while still creating a record of the communication. I strongly recommend the use of e-mail for this reason. As noted, keep copies of all of your e-mail and the responses.
7. If your former partner “sets you up” to make you look bad at transfers of children or on other occasions, you may have a witness discretely present. The witness should not be confrontational, nor worsen the situation, but instead should be someone who will make sure that your side of the story is told in Court. Keep the witness in the car or quietly inside the door if necessary. Do not videotape or otherwise record the scene without permission unless you have been advised otherwise by your lawyer. This antagonizes and may in some cases be unlawful.
8. Remember, if you leave a message on an answering machine, it may be used in Court against you. Leave only factual messages on any answering machine, no matter how angry you are. Be polite, as if you are dealing with a business acquaintance.

The Contested Process

1. *Though no two cases are alike, there are a number of steps which are common.* The case is filed, and in divorces the “grounds” (reasons) made clear. “Time Standards” require us to resolve a new case within fourteen (14) months, unless the Court orders otherwise. Modification cases are usually to be resolved within eight (8) months. Contempt actions are usually resolved on the return date set in the Summons.
2. As soon as a divorce case is filed, the complaining party is forbidden to waste assets or commit certain acts of financial warfare. As soon as the other party gets served, he or she is bound by the same orders. Hiding

assets, transferring property, and spending outrageously on credit cards are all forbidden, as are numerous other specific acts.

3. In most cases, the Court is asked to enter Temporary Orders. These Orders are effective while the case remains unresolved. It is sometimes thought of as “legal separation” in divorce matters.
4. Child custody, visitation, support, and other matters are dealt with. The parties generally mediate these issues at Court with the assistance of a Probation/Family Service Officer, and a Stipulation is entered as the Order.
5. It is usually at this point that a Guardian ad Litem will be appointed to investigate if the parties have serious allegations suggesting that one or the other is not fit for custody or visitation.
6. A “cooling down” period follows. During this period, routines get set, and other steps are taken as necessary. Both parties in a divorce should take the “Parenting Class” as soon as possible during this period.
7. I sometimes call this the “shakedown cruise.” This is when you and your spouse will set your pattern for dealing with each other, when your children will adjust, and when you will find out what works best for you. Do your best to set good patterns which you can carry through as long as necessary.
8. The patterns set here for custody and visitation are often carried into the final judgment.
9. Discovery is usually necessary, handled during the “cooling down” process. This is a process in which each party may seek documents and information about issues which they cannot resolve. Financial issues are most often the subject. Child-related questions and documents may also be investigated. If the issues are serious enough, depositions of the parties may be taken, with a stenographer taking down the questions and answers. This can be costly, however, and we will only use depositions as necessary.
10. A Pre-Trial Conference (“Pre-Trial”) is scheduled when the parties are ready. A Pre-Trial Conference Order is issued requiring the parties and counsel to meet (“Four-Party Meeting”), and to prepare memoranda describing their differences of opinion on issues. The Four-Party Meeting is used to limit differences. At the Pre-Trial, the Court assists in mediating remaining disputes through Family Services. The Guardian ad Litem, if any, is present to discuss his/her findings and recommendations. If necessary, the Judge may also point out possible results of a trial. The ultimate goal is to avoid going to Trial over issues that can be resolved. Most Pre-Trials result in a

Separation Agreement which the Court approves that day, in essence divorcing the parties. A “Judgment Nisi” is usually entered that day.

11. Separation agreements and paternity judgments can always be modified later for terms relating to children. Separation agreements are often not modifiable for terms affecting only the spouses, since they are adults. Various factors determine whether the Court will accept an agreement as non-modifiable for the spouses.
12. A trial is a last resort. Most cases are resolved without a trial. Trial is expensive and time-consuming. Advance preparation is at least equal to the time used in the trial. Rules of evidence restrict what may be presented. A single judge hears the case and makes decisions of fact and rulings of law. The Judge enters a Judgment Nisi. All aspects of a Judgment after a trial are always subject to Modification if circumstances change substantially. The Court itself encourages parties to find ways to resolve their conflicts without trials. When trial is the only way, however, we will prepare the case and give the Court the facts.
13. A paternity judgment is effective the day it is entered. Ninety (90) days after the Judgment Nisi in divorce is entered, the divorce becomes “final.” Even before it is “final,” if one party disobeys the Judgment Nisi, a Contempt action may be filed.

Mediation Instead of Court

1. *When two parties are ready to work together to resolve a case, mediation makes sense.* However, in many if not most cases the Court’s power must be invoked to start a divorce toward resolution.
2. Without a case filed, enforceable Temporary Orders regarding child support, health insurance, and other matters cannot be entered.
3. Filing itself causes an “Automatic Restraining Order” regarding the use and misuse of property to enter.
4. Thus, do not use pre-filing mediation unless you are absolutely sure that your partner is being fair and open with you.
5. Mediation is also inappropriate where there are substantial issues of marital violence, improper spending, serious mental illness, child abuse, or child neglect.
6. This does not say that you will not mediate once the matter is filed. Indeed, almost all matters are mediated in the Court system itself. If a reasonable

agreement cannot be reached, the Court can enter orders after a brief hearing.

Court Conduct and Attire

1. *You must be at your best in court.* Dress and behave as if you are at an important event — you are! You are being judged by the family service officers, the judge, the opposing attorney, and anyone else who may be involved in your case. If you act or are dressed inappropriately, you will get treated with less compassion.
2. At court, you should have a lawyer – and take his or her advice. You are paying for experience, abilities, education, and independent judgment. If you disagree, or want to add something, do it quietly. Your lawyer will listen — but you also need to listen and let your lawyer guide you through the process.

Out-of-Court Conduct

1. *You need not hide yourself away after separating from your former partner, but you should still conduct yourself with some discretion.* In a hotly contested divorce, your behavior will be scrutinized by many people, and you may find yourself surprised at who will surface to testify against you.
2. Be careful in whom you confide, especially about monetary and “hot button” issues which your former partner will try to use against you. Do not bring your children into dating or other relationships too early; they need time to adjust to the changing situation — and your “date” may not be the good person he or she pretends to be.

Paying Support and Other Obligations

1. *Pay on time, as best you can.* If you cannot meet a payment obligation, let your attorney know immediately so that appropriate action can be taken with the Court. Failing to pay, even with good cause, can be contempt of the Court’s order. Most court orders assume that a payment due in a week must be mailed by Friday of that week.
2. Pay everything in a way that gives you proof of payment — check or Postal Money Order (a money order bought at the U.S. Post Office near you) is preferred. If you must pay cash to your former partner, always insist on a signed receipt from the former partner, and keep the receipt in a safe place. Photocopy checks and money orders before mailing, and consider sending them certified mail, return receipt requested if the former partner may pretend that they did not arrive.

3. In almost all cases, D.O.R. will collect the support from your weekly pay. This creates a record that the Court will always believe over your word. If it is truly mistaken, judicial review can be obtained.

